

XAVIER BECERRA, SBN 118517  
Attorney General of California  
MARGARITA PADILLA, SBN 99966  
Supervising Deputy Attorney General  
JAMES POTTER, SBN 166992  
Deputy Attorney General  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
Telephone: (510) 879-0815  
Fax: (510) 622-2270  
Margarita.Padilla@doj.ca.gov  
James.Potter@doj.ca.gov

XAVIER BECERRA, SBN 118517  
Attorney General of California  
DANETTE VALDEZ, SBN 141780  
ANNADEL ALMENDRAS, SBN  
192064  
Supervising Deputy Attorneys General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 510-3367  
Fax: (415) 703-5480  
Danette.Valdez@doj.ca.gov  
Annadel.Almendras@doj.ca.gov

STEVEN H. FELDERSTEIN, SBN 059678  
PAUL J. PASCUZZI, SBN 148810  
FELDERSTEIN FITZGERALD  
WILLOUGHBY PASCUZZI & RIOS LLP  
500 Capitol Mall, Suite 2250  
Sacramento, CA 95814  
Telephone: (916) 329-7400  
Fax: (916) 329-7435  
sfelderstein@ffwplaw.com  
ppascuzzi@ffwplaw.com

Attorneys for California Department of Forestry  
and Fire Protection, et al.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re:  
PG&E CORPORATION  
- and -  
PACIFIC GAS AND ELECTRIC  
COMPANY,  
Debtors.

Bankruptcy Case  
No. 19-30088 (DM)  
Chapter 11  
(Lead Case)  
(Jointly Administered)

<input type="checkbox"/>	Affects PG&E Corporation
<input type="checkbox"/>	Affects Pacific Gas and Electric Company
<input checked="" type="checkbox"/>	Affects both Debtors

Date: December 17, 2019  
Time: 10:00 a.m.  
Ctm: 17  
Judge: Dennis Montali

STATEMENT OF THE CALIFORNIA STATE AGENCIES IN  
RESPONSE TO THE COURT'S MEMORANDUM REGARDING  
CONFIRMATION ISSUES [DOCKET NO. 4760]

1 The California Department of Forestry and Fire Protection, California Department of  
2 Toxic Substances Control, California Governor's Office of Emergency Services, California  
3 Department of Veterans Affairs, California State University, California Coastal Commission,  
4 California Department of Parks and Recreation, California Department of Fish and Wildlife,  
5 California Department of Transportation, California Department of Developmental Services,  
6 California Department of Conservation, Division of Oil, Gas and Geothermal Resources,  
7 California Regional Water Quality Control Boards, California State Water Resources Control  
8 Board, California Air Resources Board and California Department of Water Resources  
9 (collectively, the "California State Agencies") hereby file this response to the Court's  
10 *Memorandum Regarding Confirmation Issues* ("Memorandum") [Docket No. 4760] as follows:

11 1. Among other things, the Memorandum requested principal counsel for the  
12 Debtors, the two official committees and the Ad Hoc Noteholders Committee, and the Ad Hoc  
13 Subrogation Claim Holders meet and confer as to whether the Court "should fix an early deadline  
14 for confirmation objections based on the requirements of 11 U.S.C. § 1129(a)(1), (2), (3), (4), (5)  
15 and (13)" and identify any other confirmation related issues that the Court could address through  
16 briefing and argument prior to final approval of a disclosure statement. Memorandum at 3-4.

17 2. While not included in the named principal counsel, the California State Agencies  
18 file this statement to address their issues of concern with the Court. The California State  
19 Agencies assert approximately \$3.3 billion in wildfire-related claims, as well as many other non-  
20 wildfire-related claims that must be properly dealt with under any chapter 11 plan.

21 3. The California State Agencies are generally not opposed to the Court setting an  
22 early deadline for confirmation objections based on 11 U.S.C. § 1129(a)(4), (5) and (13), so long  
23 as the identifications and disclosures required by 11 U.S.C. § 1129(a)(5) are contained in the  
24 solicitation materials. To the extent such information is not provided at the time of solicitation,  
25 an early deadline for confirmation objections is not appropriate.

26 4. The California State Agencies are aware that the Debtors have filed their Motion  
27 Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an  
28

1 Order (I) Authorizing the Debtors and TCC to Enter into Restructuring Support Agreement with  
2 the TCC, Consenting Fire Claimant Professionals, and Shareholder Proponents, and (II) Granting  
3 Related Relief (Dkt. No. 5038) (the “Tort Claimants RSA Motion”), in which they seek approval  
4 of a restructuring support agreement (the “RSA”) between them and, among others, the Official  
5 Committee of Tort Claimants (“TCC”). The Debtors also filed their *Debtors’ and Shareholder*  
6 *Proponents’ Joint Chapter 11 Plan of Reorganization Dated December 12, 2019* (Dkt. No. 5101)  
7 (“Amended Plan”). The California State Agencies reserve all rights with respect to the Tort  
8 Claimants RSA Motion and confirmation of the Amended Plan contemplated by the RSA (or any  
9 other chapter 11 plan). As of the filing of this statement, however, the California State Agencies  
10 have not thoroughly reviewed the Amended Plan.

11 5. With respect to 11 U.S.C. § 1129(a)(1), (2) and (3), any early deadline for  
12 confirmation objections should not be imposed so long as critical elements required for a  
13 determination of those subsections are missing. For example:

14 a. Potential Unequal Treatment of Claims. The proposed *Joint Chapter 11*  
15 *Plan of Reorganization of Official Committee of Tort Claimants and Ad Hoc Committee of Senior*  
16 *Unsecured Noteholders* [Dkt. No. 4257] (“Noteholders/TCC Plan”) and the proposed Debtors’  
17 and Shareholder Proponents’ Amended Plan do not adequately explain whether there will be one  
18 wildfire trust or multiple trusts “to administer, process, settle, resolve, liquidate, satisfy, and pay”  
19 wildfire claims. *See* Noteholders/TCC Plan, Art. 1, § 1.79; RSA Term Sheet page 3; Amended  
20 Plan Art. 1, § 1.78. The possibility of more than one trust raises the possibility of wildfire trusts  
21 funded in different amounts with different wildfire claims channeled to unequally funded trusts  
22 with different claims resolution procedures. This potential difference in the treatment of wildfire  
23 claims implicates several subsections of section 1129, including possibly (a)(1), (2) and (3). The  
24 plan proponents must clarify whether their respective plans will create one or more wildfire trusts  
25 before the Court sets an early deadline with respect to plan confirmation as suggested in its  
26 Memorandum.

27 b. Trust Governance and Operation. Neither plan attaches or provides any  
28 meaningful description of the trust agreements or the claims resolution procedures that will

1 govern the resolution, liquidation, and payment of claims from their respective wildfire trusts.  
2 *See* Noteholders/TCC Plan, Art. 1, §§ 1.78, 1.79, and 1.80; Amended Plan, Art. 1, §§ 1.76, 1.78  
3 and 1.81. Nor does either plan provide the identities of the trustee(s) for the wildfire trust or the  
4 members of the committee or board to oversee the trusts. *See* Noteholders/TCC Plan, Art 1, §§  
5 1.81 and 1.82; Amended Plan, Art. 1, §§ 1.80 and 1.81. Under the two plans, the plan proponents  
6 will provide this critical information just fourteen days before the confirmation objection deadline  
7 (when they file their respective Plan Supplements). *See* Noteholders/TCC Plan, Art 1, § 1.154;  
8 Amended Plan, Art. 1, 1.142.

9           Such short notice may be justified where a supplement includes only schedules of  
10 rejected contracts, debtor-retained causes of action, new organizational documents, and the  
11 identity of new officers. Here, however, that document will contain detailed information  
12 regarding the treatment of wildfire creditors' claims, including (i) how creditors may assert  
13 wildfire claims against the trust(s), (ii) procedures for resolving those claims, (iii) who will decide  
14 how claims are resolved, and (iv) what is the form of consideration for satisfaction of those  
15 claims. Fourteen days is clearly insufficient for wildfire creditors, like the California State  
16 Agencies, to review a likely lengthy and detailed trust agreement and claims resolution  
17 procedures to assess the treatment of its claims and decide whether to object to that treatment. In  
18 particular, given the size of the California State Agencies' claims, they are entitled to ensure that  
19 the trust is governed fairly by a neutral and experienced trustee(s).

20           Accordingly, the Court should not impose a plan confirmation objection deadline in the  
21 absence of such necessary information. If the Court is nevertheless inclined to set an early  
22 objection deadline for those Code subsections, then the Court should also require the plan  
23 proponents to file the trust agreements, claim resolution procedures, and the identities of the  
24 trustee(s) and members of the oversight committee at least thirty (30) days before that early  
25 objection deadline.

26           6. In addition to the foregoing, the California State Agencies have preliminarily  
27 identified a few issues of concern that are not addressed fully in either of the proposed plans. The  
28 California State Agencies intend to meet and confer with the plan proponents to address these and

1 any other subsequently identified deficiencies, and reserve all rights to identify other issues and  
2 make other objections at the appropriate time. The California State Agencies are not suggesting  
3 that these are issues that need to be briefed in advance of confirmation. Three of these areas of  
4 concern are the following:

5 a. Specification of Treatment of Unimpaired Environmental Claims. The  
6 utility Debtor (“Utility”) has significant environmental obligations and liabilities to multiple state  
7 agencies under various state and federal environmental laws. These include pre- and post-petition  
8 “Claims,” statutory, regulatory and injunctive obligations, and obligations under permits, orders  
9 and agreements. The Utility has environmental obligations and liabilities at many sites, including  
10 its fossil fuel-fired and nuclear power-plants, its compressor stations (Hinkley and Topock),  
11 scores of old manufactured gas plants (also known as town gas sites), miscellaneous service  
12 locations and six large closed commercial hazardous waste landfills. In its 2018 Annual  
13 Hazardous Substance Mechanism (“HSM”) Report to the California Public Utilities Commission  
14 (“CPUC”), the Utility reported that it had recorded \$105,808,224 in total HSM costs in  
15 connection with environmental remediation at numerous sites for 2018 alone.

16 Neither plan sets forth in specific detail the treatment for California State  
17 Agencies’ respective environmental Claims as well as the Utility’s injunctive, permit, order and  
18 agreement obligations. The only specific reference to environmental liability is in Section 10.13  
19 of each plan and only provides that the discharge does not affect “any environmental liability to a  
20 Governmental Unit that the Debtors, the Reorganized Debtors, any successors thereto, or any  
21 other Person or Entity may have as an owner or operator of real property after the Effective  
22 Date[.]” *See* Noteholders/TCC Plan, Art. 10, § 10.13; Amended Plan, Art. 10, § 10.13.

23 The California State Agencies request that any proposed plan specify that the  
24 California State Agencies’ respective environmental Claims, as well as the Utility’s injunctive,  
25 permit, order and agreement obligations, pass through unimpaired as if no bankruptcy had been  
26 filed, and that the determination, adjudication, payment, compliance and resolution of any  
27 disputes regarding these matters shall occur in the appropriate non-bankruptcy forum as if no  
28 bankruptcy had been filed. This was the treatment accorded to such claims in the 2001

1 bankruptcy case of the Utility. Since most of the Utility's regulatory and environmental  
2 obligations are paid for through rates, this treatment should not be a significant additional  
3 financial commitment for the Reorganized Debtor. However, if there is not a pass-through  
4 provision, the estate will incur substantial expenses resolving (through settlement or litigation)  
5 and then paying its environmental Claims.

6 b. Unfulfilled Obligations under First PG&E Chapter 11 Plan. The confirmed  
7 chapter 11 plan in the Utility's first bankruptcy case obligated PG&E to transfer certain  
8 watershed lands. These transactions were still in process at the time these bankruptcy cases were  
9 filed and the watershed lands were carved out from the DIP loan collateral. Neither plan sets  
10 forth in specific detail what is to happen with these transfers. The California State Agencies  
11 request that any current chapter 11 plan specifically provide that these transfers proceed to  
12 completion.

13 c. Department of Water Resources/CERS Issues. The Department of Water  
14 Resources ("DWR") filed protective claims arising out of the Utility's ongoing regulatory  
15 obligations that relate to the delivery of water and other services critical to management of the  
16 State's water supply for the benefit of the public and to protect fish and wildlife habitat. In  
17 addition, DWR is entitled to refunds in the Utility's transmission rate cases pending before FERC  
18 for 2018 and 2019. Neither plan sets forth in specific detail what is to happen with the Utility's  
19 ongoing regulatory obligations owed to the DWR or FERC refunds for 2018 and 2019. DWR  
20 requests that any chapter 11 plan specifically preserves these rights.

21 In addition, DWR, by and through its California Energy Resources Scheduling  
22 Division ("CERS"), filed a protective claim regarding the Utility's obligation to bill and collect  
23 charges from its customers that pay for the \$11.5 billion in bonds that CERS issued to purchase  
24 power on behalf of the investor-owned utilities, including the Utility, during the California energy  
25 crisis. The funds that the Utility collects are held in trust for the benefit of CERS.

26 Since 2000, the Utility and dozens of other parties, including CERS, have engaged  
27 in complex regulatory proceedings and appellate litigation arising out of the 2000-2001 California  
28 energy crisis. Over the years, funds have been set aside in various qualified settlement funds and

1 in one or more accounts held by the California Power Exchange pursuant to the terms of over 60  
2 settlement agreements approved by the CPUC and the Federal Energy Regulatory Commission.  
3 These settlement funds were carved out of the DIP collateral. DWR requests that the resolution  
4 of such funds should continue through these proceedings as if no bankruptcy had been filed, as  
5 currently provided for in section 4.21 of the Amended Plan. Any chapter 11 plan should  
6 specifically so provide.

### 7 **RESERVATION OF RIGHTS**

8 Neither this statement nor any subsequent appearance, pleading, proof of claim, claim or  
9 suit is intended or shall be deemed or construed as:

10 a. a consent by the California State Agencies to the jurisdiction of this Court  
11 or any other court with respect to proceedings, if any, commenced in any case against or  
12 otherwise involving the California State Agencies;

13 b. a waiver of any right of the California State Agencies to (i) have an  
14 Article III judge adjudicate in the first instance any case, proceeding, matter or controversy as to  
15 which a Bankruptcy Judge may not enter a final order or judgment consistent with Article III of  
16 the United States Constitution, (ii) have final orders in non-core matters entered only after de  
17 novo review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the  
18 Chapter 11 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases,  
19 (iv) have the United States District Court withdraw the reference in any matter subject to  
20 mandatory or discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs,  
21 recoupments or remedies to which the California State Agencies are or may be entitled under  
22 agreements, in law or in equity, all of which rights, claims, actions, defenses, setoffs and  
23 recoupments are expressly reserved hereby; or

24 c. a waiver of any objections or defenses that the State of California, the  
25 California State Agencies or any other agency, unit or entity of the State of California may have  
26 to this Court's jurisdiction over the State of California, the California State Agencies or such  
27 other agency, unit or entity based upon the Eleventh Amendment to the United States

28 ///

1 Constitution or related principles of sovereign immunity or otherwise, all of which objections and  
2 defenses are hereby reserved.

3 Dated: December 13, 2019

Respectfully submitted,

4 XAVIER BECERRA  
Attorney General of California  
5 MARGARITA PADILLA  
Supervising Deputy Attorney General  
6

7 By: /s/ Paul J. Pascuzzi

STEVEN H. FELDERSTEIN  
8 PAUL J. PASCUZZI  
FELDERSTEIN FITZGERALD  
9 WILLOUGHBY PASCUZZI & RIOS LLP  
Attorneys for California Department of Forestry and  
10 Fire Protection, California Regional Water Quality  
Control Boards, California Department of Toxic  
11 Substances Control, California Governor's Office of  
Emergency Services, California Department of Veterans  
12 Affairs, California State University, California State  
Water Resources Control Board, California Air  
13 Resources Board, California Coastal Commission,  
California Department of Fish and Wildlife, California  
14 Department of Parks and Recreation, California  
Department of Transportation, California Department of  
15 Developmental Services, California Department of  
Conservation, Division of Oil, Gas and Geothermal  
16 Resources and California Department of Water  
Resources  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Sabrina M. Cisneros, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 500 Capitol Mall, Suite 2250, Sacramento, CA 95814. On December 13, 2019, I served the within documents:

**STATEMENT OF THE CALIFORNIA STATE AGENCIES IN  
RESPONSE TO THE COURT’S MEMORANDUM REGARDING  
CONFIRMATION ISSUES [DOCKET NO. 4760]**

By Electronic Service only via CM/ECF.

/s/ Sabrina M. Cisneros  
Sabrina M. Cisneros